HIGH COURT OF CHHATTISGARH AT BILASPUR

Misc. Appeal No.798 of 2005

CORAM: Hon'ble Shri S.R. Nayak, CJ
& Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Appellant (Non-Applicant No.3)	:	National Insurance Company Limited, Khadagpur Branch, Through; It's Branch Manager, Naveen Market, Phool Chow, Raipur (C.G.)
	Versus	
Respondents (Applicant No.1)	:1.	Smt. Meena Bai Yadav aged 33 years, W/o Late Nanhu Yadav @ Bisram.
(Applicant No.2)	:2.	Lala Ram Yadav, aged 16 yrs. S/o Nanhu Yadav
(Applicant No.3)	:3.	Ku. Rekha Yadav, aged 13 years D/o Nanhu Yadav.
(Applicant No.4)	:4.	Raja Ram Yadav, aged 12 years, S/o Nanhu Yadav, Res. No.2 to 4 are minors. Ad - Litem - Guardian through Mother- Meena Bai Yadav. All are R/o Math Puraina, Raipur, Tah. & Distt. Raipur (C.G.)
(Non-applicant No.1)	:5.	Mojam Miyan, aged 45 years S/o Balle Minya Musalman, R/o Ramnagar, P.S. Dhamaujjaghat, Distt. Dearia (U.P.) (Driver) (At present - Hallmukam Balaji Transport Bhanpuri, Distt. Raipur (C.G.) (Driver)
(Non-applicant No.2)	:6.	Gokul Chand, s/o Preetam Chand, R/o Gole Bazar, Fruit Market, Khadagpur, West Bangal, Distt. Midnapore (W.B.) (Owner)

Shri Shri Dashrath Gupta, Counsel for the appellant.

ORAL ORDER
(Passed on 2nd January 2006)

The following oral order of the Court was passed by S.R.NAYAK, C.J.

1. The appellant-Insurance Company has insured the truck involved in the accident. In the written statement filed by the appellant-Insurance Company before the Motor Accidents Claims Tribunal (M.A.C.T.), among other grounds, it was contended that the driver of the tractor, the other vehicle involved in the accident, also contributed to the negligence in causing the accident. Although such plea was taken in the written statement, but, admittedly, the appellant-Insurance Company did not adduce any evidence to substantiate that plea. In other words, the plea taken by the appellant-Insurance Company remained as a plea without any proof. Be that as it may, from the evidence on record, the Tribunal or this Court cannot infer contributory negligence on the part of the driver of the tractor, the other vehicle involved in the accident. The factual finding recorded by the M.A.C.T. on the basis of evidence on record, therefore, cannot be faulted with.

2. The appeal is devoid of merit and it is accordingly dismissed. No costs.

Sd/-
Chief Justice

Sd/-
Dilip Raosaheb Deshmukh
Judge

Anjani
Priya